

15 December 2006

MEMO FOR: Jerry Boese, Ross & Associates (contractor)
Denise Keehner, EPA HQ
Mike Gearheard, EPA Region 10

FROM: Dave Shepp, HQ USACE
Dave Ponganis, NWD USACE
Rudd Turner, NWD USACE

SUBJECT: Corps of Engineers comments on DRAFT Water Quality Workshop summary report: Ross & Associates. December 1, 2006. Workshop on Water Quality Standards Attainment for Federal dams in the Pacific Northwest – Draft Summary. 12 pages.

As requested, Corps of Engineers comments on the subject report are provided below. Thank you for the opportunity to comment on the draft summary.

Page 1, Brief Summary of Day One: This section refers to opening remarks by EPA and Corps policy level managers but does not give any details. These remarks were important in laying the foundation of the workshop and supporting its goals. They should be summarized in the notes. The opening remarks included the following key points:

Denise Keehner, EPA HQ:

- Challenges exist with attainable WQS related to dams.
- Dams need to comply with several sets of statutory & regulatory requirements.
- Issues exist with competing and contradictory operations.
- We do not want the courts or Congress to decide the specific issues.
- At this workshop, we will have listening ears to better understand where people are coming from.
- We will remain open minded and not infer motives in participants' views expressed here.
- The fundamental question for this group is: Do we want to move forward?

Dave Shepp, Corps HQ:

- Risks exist with the current path.
- The people in this room are the ones to solve the issues.
- "1 + 1 = 3" In the northwest, there has been work on 1 impairment (temperature), with 1 state (Oregon), for the past 3 years, without accomplishing a pilot study. This is an inefficient way to conduct the public's business; we must do better.
- Dam operators need to optimize for 3 authorities: projects in place and operating for multiple purposes, CWA, and ESA.

- The Corps is committed to moving in a greener direction.
- Need integration and regionalization for these issues, and find areas of intersection to move ahead in an efficient manner.

Mike Gearheard, EPA Region 10:

- WQS represent a science goal of society, to improve the environment – a noble goal.
- Dams represent grand achievements of society, also high ideals.
- I do not see a brick wall here, or a stuck in the mud situation. EPA Region 10 wants to support both goals.
- EPA understands that there is an attainability problem.

Witt Anderson, Corps Northwestern Division:

- Need to work for a comprehensive regional solution, get agreement, build support for the needed funding (Congress) to do what is feasible, both technical and economic.
- Fish program and water quality: While some overlap exists, there are different processes and people involved. Need to coordinate among the processes, but do not combine them. Find a subset of players who can work on both, in the areas of intersection.

Page 2, CWA requirements, 1st bullet: At the end of the 1st sentence, replace “sufficient” with “attainable”, to read “...the standards promulgated are attainable.” In the 3rd sentence, EPA performed the Columbia/Snake TMDL because the states asked them to do it, not because it is a bi-state water body. The states had previously completed TMDLs for TDG in the same river reaches, so bi-state TMDLs can be done. At the end of the last sentence, add a phrase, to read “...where consultation is prudent and water quality standards are not informed by the ESA process.”

Page 2, UAAs: In line 6, add words: “...the owner should consider ongoing or completed ESA section 7 consultations...” In line 7, change a word: Oregon worked on an internal management directive (not initiative) to address UAAs.

Page 2, Site Specific Criteria: Add to text: Jennifer Wigal, EPA HQ, said that site specific criteria cannot consider economic criteria. It is a science test, not economic. Add the following text to end of sentence: “...it is essentially a science test which ultimately must refute accepted, existing science with new science – a very high bar to surmount in proving the negative.”

Page 2, CWA Tools, Variances: The Oregon representative’s statement that they cannot utilize variances for non-NPDES permit situations is contradicted by their actual practice. Oregon provides Total Dissolved Gas (TDG) variances, which they call waivers, for Federal Columbia River mainstem dams in order to provide spill for fish passage. During the discussion, it was noted that Oregon’s TDG waiver process is not a CWA variance that has received EPA approval.

Page 3, compliance Schedule: In line 2, add words: "...states may adopt and implement compliance schedules in lieu of TMDLs under their own..." Also, what is the point of the litigation statements? It says Washington was challenged but what was the outcome? The fact is, nothing protects the government from a lawsuit. What governments' focus should be on is making decisions that are based on valid facts, supported by the science, well documented for the record, and thus are defensible in court. What we need is a defensible posture and to be able to stand together in court as state and federal entities, dam operators and environmental regulators, in support of government decisions and actions.

Page 3, ESA requirements, 1st paragraph: Add to text: Ritchie Graves made the point for the ESA assessment process that "dams are there, and we (NOAA) figure out how to live with them."

Page 3, Congressional Authorization Legislation for Federal Dams: Add to text: In answering the first question, Dave Ponganis said that the time frame for both authorization and appropriation takes a few years, and can take more than 20 years. These are two separate legislative actions. Authorizations are given in a Water Resources Development Act (WRDA), which can happen every 2 years. However, the most recent WRDA legislation was passed in December 2000, so it has been a while for new Corps authorizations. The Corps receives funding for its programs as part of the annual appropriations process. Both actions must occur in order for the Corps to construct a project.

Page 3, Congressional Authorization Legislation for Federal Dams: In the answer to question 3, line 3, add text: "...to receive authorization and funding for modifications." In line 5, after the sentence on Dworshak operations, add a sentence: This time was required to conduct feasibility tests and negotiate the operation through the ESA Section 7 consultation process for hydrosystem operations. Last sentence, add a phrase at the end: "...request for additional funds to make structural changes.

Page 4, State and Tribal WQS and Flexibilities / Tools, Idaho section: Add to text: After legislative action, the rule change goes to EPA for approval. This process takes 18 months as a minimum. The State of Idaho also has a stringency statute. Idaho DEQ is not to adopt a rule that regulates an activity not regulated by the Federal government, unless a 6 step process is followed. Economic and social analyses are among the 6 steps in the evaluation process.

Page 4, State and Tribal WQS and Flexibilities / Tools, Washington section: End of line 3, add text: "...who is having an influence on an impaired waterbody..." Also, Melissa made several additional points which should be added: Tribes play a pivotal role in the water quality standards process. A WQ attainment plan must show aggressive work to ensure compliance with all applicable WQS. A Washington UAA will apply to a water body. All parties must be on board beforehand – Washington does not want another [EPA] disapproval action.

Page 4, Case Study: Grand Coulee Dam, 1st bullet: The comment came from EPA, Mike Gearheard, EPA. It is rather confusing as written. Suggest checking with Mike, and do a rewrite that recommends that temperature modeling be rerun for Grand Coulee with updated information. Water quality standards allow for natural temperatures that exceed the numeric standard. A water quality standards change may reduce the number of days of noncompliance at Grand Coulee.

Page 5, Key Points from Day Two: Add a paragraph:
Mike Gearheard, EPA Region 10, expressed support for Dave Shepp's (USACE HQ) statement that, if the Columbia/Snake River Temperature TMDL is to be revisited a totally new, inter-agency modeling team must determine and obtain necessary data, select an appropriate modeling tool, agree upon fundamental assumptions (such as: dams in the baseline, accounting for systemwide inputs of pollution from both point and nonpoint sources), review and approve both model input and output, and collectively assess and interpret and report upon findings.
[It should be noted that following the second day of the workshop in a follow on discussion the next day with USACE, Denise Keehner, EPA HQ suggested that an experienced, independent, modeling consultant might be contracted to conduct the modeling, (with input, oversight and review from the interagency modeling team) as an unbiased 3rd party.]

Page 5, Case Study: Lower Snake River and Dworshak Dams: The answer to the question needs to be rewritten and expanded. The answer is Yes, but it is because: Operating the run-of-river dams close to full pool provides required navigation depths, supports power generation, and allows fish passage facilities to operate properly. Operating reservoirs near full has the result of slowing water flow and increasing the surface area relative to unimpounded river conditions. The increased surface area is subject to unavoidable solar heating – just by the mere existence of the dam – independent of any reservoir operations/management actions.

Page 6, Calling the Question, ACE response: In the second sentence, difficulty with a regional approach refers to technical issues and tools related to specific projects, not attainability issues as a whole. There is a need to work issues at the policy level regionally, and look for groupings of impairments, water bodies, and states where these can be worked on in a single technical or regulatory process.

Page 7, Convergence of Organizations' Visions, in the 2nd bullet, A regional dialogue or forum that: In the first bullet, a rewrite: Is comprehensive (ESA/EFH, CWA, and the existence/operation of Federal dams in each case)

Page 7, Convergence of Organizations' Visions, in the 2nd bullet, 3rd sub-bullet: Add text: Uses systemic approach to focus **case-by-case** (not one-size-fits-all) on facilities and optimizes case-by-case opportunities/adjustments to achieve maximum overall system benefit.

Page 7, Convergence of Organizations' Visions, in the 4th bullet: Add text:
Seek and use available or additional flexibilities to optimize cost-effective, feasibly attainable solutions.

Page 7, Convergence of Organizations' Visions, add a bullet:

- Recognize/utilize appropriate portions of existing ESA determinations to inform CWA water quality standard decisions and to ensure consistency of approach/guidance to states and tribes from the Federal Family

Page 7, Convergence of Organizations' Visions, in the 2nd bullet: Participants of the forum have a shared goal of recovery, protection and attainment (not just regulatory compliance).

Page 8, Convergence of Organizations' Visions, in the 2nd bullet, 3rd sub-bullet:

- Consider issues in addition to temperature, to include all Water Quality issues, to be addressed by the Pacific Northwest Water Quality Forum (PNWWQF)

Page 8, Convergence of Organizations' Visions, in the 5TH bullet:

- Need to be able to scope the participation effort

This bullet is unclear; it needs to be revised for clarity.

Page 8, Convergence of Organizations' Visions, in the 7TH bullet, 2nd sub-bullet:

- Appropriate ESA and CWA within the context of the existence and operation of federal dams

Page 8, Convergence of Organizations' Visions, in the 9TH bullet:

- Commitment to reach agreement or MOU. Recommend deletion of MOU and clarification on what commitment to reach agreement pertains to – general agreement on Water Quality issues in the Pacific Northwest?

Page 8, Tentative Action Planning

1st Sentence, as written, fails to convey the positive disposition of the outcome of the Workshop by attendees. Rewrite the first sentence to reflect a more positive description of the overall outcome of the workshop as voiced by attendees in Calling the Question.

Suggested new first sentence: While participants agreed upon the utility and desirability of a regional, collaborative, integrated, intergovernmental Water Quality Forum for addressing Water Quality Attainment Issues for Federal Dams in the Pacific Northwest, many of the attending organizations will need to confirm their commitment to the shared goals and ideals expressed by the participants at the conclusion of the workshop.

Page 8, Next Steps Table: Under Task Column, 4th Row, 1st bullet:

- ID "Success" Parallel Path

This heading is unclear; revise to clarify intent.

Page 8, Next Steps Table: Under Task Column, 6th Row, 1st bullet:

Suggest the following modification: Convene Feds to integrate and ensure consistency of the Federal WQS process.

Page 8, Next Steps Table: Under Task Column, 6th Row, 1st bullet, 1st sub-bullet:

- States want to avoid negotiations with individual Federal agencies – the Federal Family should speak as one voice in WQS